

MT LEGISLATIVE HISTORY

Chapter 455 1983

Bill H 219 S _____

Original bill & hist. ☒ C

H. Committee on Cons & Industry

S. Committee on Business & Ind

Hearing Date(s) _____ C

Hearing Date(s) _____ C

1/21 ☒ C

_____ C

_____ C

3/9 ☒ C

_____ C

_____ C

Date Out 1/21 ☒ C

3/9 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE BILL NO. 219

INTRODUCED BY HANNAH, R. JENSEN

BY REQUEST OF THE SECRETARY OF STATE

IN THE HOUSE

January 13, 1983	Introduced and referred to Committee on Business and Industry.
January 21, 1983	Committee recommend bill do pass. Report adopted.
January 22, 1983	Bill printed and placed on members' desks.
January 25, 1983	Second reading, do pass.
January 26, 1983	Considered correctly engrossed.
January 27, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 28, 1983	Introduced and referred to Committee on Business and Industry.
March 10, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 12, 1983	Second reading, pass consideration.
March 14, 1983	Second reading, concurred in as amended.
March 16, 1983	Third reading, concurred in. Ayes, 47; Noes, 0.

IN THE HOUSE

March 16, 1983	Returned to House with amendments.
March 30, 1983	Second reading, amendments concurred in.
March 31, 1983	Third reading, amendments concurred in.
	Sent to enrolling.
	Reported correctly enrolled.

1 House BILL NO. 219
 2 INTRODUCED BY Harold Jensen
 3 BY REQUEST OF THE SECRETARY OF STATE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS
 6 30-13-202 AND 30-13-205, MCA, RELATING TO WHEN REGISTRATION
 7 OF AN ASSUMED BUSINESS NAME IS PROHIBITED; AND PROVIDING AN
 8 EFFECTIVE DATE."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 30-13-202, MCA, is amended to read:

12 "30-13-202. Registration of assumed business name
 13 ~~similar-to-reserved-or-registered-name-or-mark~~ when
 14 prohibited. (1) When an application for registration or
 15 amendment to the registration of an assumed business name
 16 contains an assumed business name which is the same as or
 17 deceptively similar to an assumed business name already
 18 registered or to any corporate name, limited partnership
 19 name, trademark, or service mark registered or reserved with
 20 the secretary of state, the secretary of state may not
 21 register the assumed business name for which application is
 22 made.

23 (2) When the applicant is a corporation, the secretary
 24 of state may not register the assumed business name for
 25 which application is made unless the name applied for

1 contains the word "corporation", "company", "incorporated",
 2 or "limited" or an abbreviation of one of such words.

3 (3) When the applicant is a limited partnership, the
 4 secretary of state may not register the assumed business
 5 name for which application is made unless the name applied
 6 for contains the words "limited partnership" in full.

7 (4) When the applicant is other than a corporation or
 8 limited partnership, the secretary of state may not register
 9 the assumed business name for which application is made if
 10 the name applied for contains the word "corporation",
 11 "company", "incorporated", or "limited" or an abbreviation
 12 of one of such words."

13 Section 2. Section 30-13-205, MCA, is amended to read:

14 "30-13-205. When registration of assumed business name
 15 by foreign corporation or foreign limited partnership
 16 prohibited. No foreign corporation or foreign limited
 17 partnership which does not have an effective certificate of
 18 authority or certificate of registration to transact
 19 business in this state may register an assumed business name
 20 as provided for in this part."

21 NEW SECTION. Section 3. Effective date. This act is
 22 effective May 1, 1983.

-End-

INTRODUCED BILL

March 10, 1983

SENATE STANDING COMMITTEE REPORT
(Business & Industry)

At House Bill No. 219 be amended as follows:

1. Page 2, line 1.

Following: "contains"

Insert: "~~or there is added at the end of the name,~~"

2. Page 2, line 6.

Following: "contains"

Insert: "~~or there is added at the end of the name,~~"

3. Page 2, line 10.

Following: "contains"

Insert: "~~or there is added at the end of the name,~~"

March 14, 1983

SENATE COMMITTEE OF THE WHOLE AMENDMENT

That House Bill No. 219 be amended as follows:

1. Page 1, line 23.

Strike: Subsections 2 and 3 in their entirety

Renumber: Subsequent subsection

HOUSE BILL NO. 219

INTRODUCED BY HANNAH, R. JENSEN

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 30-13-202 AND 30-13-205, MCA, RELATING TO WHEN REGISTRATION OF AN ASSUMED BUSINESS NAME IS PROHIBITED; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-13-202, MCA, is amended to read:

"30-13-202. Registration of assumed business name similar to reserved or registered name or mark -- when prohibited. (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name which is the same as or deceptively similar to an assumed business name already registered or to any corporate name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) When the applicant is a corporation, the secretary of state may not register the assumed business name for which application is made unless the name applied for

contains OR THERE IS ADDED AT THE END OF THE NAME the word "corporation", "company", "incorporated", or "limited", or an abbreviation of one of such words.

(3) When the applicant is a limited partnership, the secretary of state may not register the assumed business name for which application is made unless the name applied for contains OR THERE IS ADDED AT THE END OF THE NAME the words "limited partnership" in full.

(4) When the applicant is other than a corporation or limited partnership, the secretary of state may not register the assumed business name for which application is made if the name applied for contains OR THERE IS ADDED AT THE END OF THE NAME the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words."

Section 2. Section 30-13-205, MCA, is amended to read:

"30-13-205. When registration of assumed business name by foreign corporation or foreign limited partnership prohibited. No foreign corporation or foreign limited partnership which does not have an effective certificate of authority or certificate of registration to transact business in this state may register an assumed business name as provided for in this part."

NEW SECTION. Section 3. Effective date. This act is effective May 1, 1983.

-End-

-2-

HB 219

STATUS SHEET

BUSINESS & INDUSTRY COMMITTEE

48 Legislature

Bill No.	Subject matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 213	Requiring developer of condo owning a controlling interest to notify buyers of that interest	1-14	Dozier	1-25	Do Pass Amended	1-28
✓ HB 219	When registration of an assumed business name is prohibited	1-14	Hannah	1-21	Do Pass	1-21
HB 229	Revise laws relating to business & non profit corporations	1-14	Ramirez	1-24	Do Pass	1-24
HB 236	Exempting car pools from regulation as motor carriers	1-14	Dozier	1-21	Do Pass	1-21
HB 244	Limiting the rule of 78ths method of computing interest and refunds on prepayment loans	1-14	Fabrega	1-25	Do Pass	1-25
HB 249	Eliminate the requirement that a store obtain a store license	1-14	Sales	1-24	Do Not Pass	1-24

Mr. Ostermiller: Yes. REP. SAUNDERS: What is the minimum you could live with as far as height? Mr. Zion: 28 feet would be comfortable. I think we should sit down with the utilities and figure out what can be done. Mr. Castles: There are lines running everywhere. I don't know if raising them is the answer.

HOUSE BILL 219

REP. TOM HANNAH, District 67, sponsor, said the Secretary of State's Office requested him to sponsor this bill. This bill, which would be effective May 1, 1983, requires the use in a business name of "corporation," "company," "incorporated," or "limited" when the applicant is a corporation, and requires use of "limited partnership" for that type of organization. The bill conversely prohibits use of those terms when they do not legally apply. The bill also prohibits registration in Montana of the business names of a foreign corporation that does not have an effective certificate of authority or certificate of registration to transact business in this state.

PROPOSERS: none

OPPOSERS: none

QUESTIONS:

REP. KITSELMAN: Why do you have a May 1 filing date?

Rep. Hannah: If this bill passes, they need at least that much time to notify the public that it will be in effect.

HOUSE BILL 236

REP. ROBERT DOZIER, District 61, sponsor, said this is a simple bill to exempt car pool members from regulation by the Public Service Commission. He said many workers from the Colstrip area carpool to work and this bill would exempt them from sounding like a public transportation system.

WAYNE BUTT, Public Service Commission, said this removed groups of not more than 15 passengers traveling from home to work and back once a day, if the driver is also on his way to work from regulation by the PSC.

OPPOSERS: none

QUESTIONS:

REP. ELLISON: This says workers - how about students going

January 21, 1983
Page 6
Business & Industry Committee

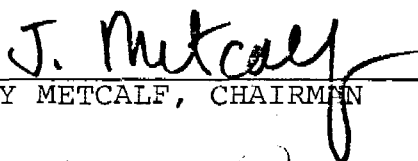
to school? Mr. Butt: I would interpret this to also mean students.

EXECUTIVE SESSION:

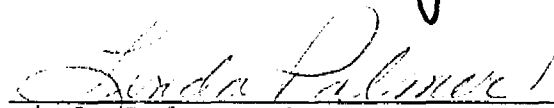
REP. KITSELMAN: I move that HOUSE BILL 236 DO PASS.
Question: Rep. Fagg.
Motion carried UNANIMOUSLY.

REP. KITSELMAN: I move that HOUSE BILL 219 DO PASS.
Question: Rep. Fagg.
Motion carried UNANIMOUSLY.

The hearing adjourned at 11:30 a.m.



JERRY METCALF, CHAIRMAN



Linda/Palmer, Secretary

STANDING COMMITTEE REPORT

January 21 19 33

MR. Speaker:

We, your committee on BUSINESS & INDUSTRY

having had under consideration HOUSE Bill No. 219

(white)

"A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 30-13-202 AND 30-13-205, MCA, RELATING TO WHEN REGISTRATION OF AN ASSUMED BUSINESS NAME IS PROHIBITED; AND PROVIDING AN EFFECTIVE DATE."

Respectfully report as follows: That HOUSE Bill No. 219

DO PASS

COMMITTEE ON BUSINESS AND INDUSTRY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
HB 18	1-26-83	3-2-83	3-2-83					3-2-83	
HB 20	1-14-83	1-17-83	1-17-83				1-17-83		
HB 63	1-18-83	1-24-83 1-28-83	1-28-83				1-28-83		
HB 64	1-18-83	1-24-83	1-24-83				1-24-83		
HB 100	3-1-83	3-22-83	3-22-83					3-22-83	
HB 106	1-26-83	2-7-83	2-7-83				2-7-83		
HB 132	1-28-83	2-2-83	2-2-83				2-2-83		
HB 134	1-28-83	2-2-83	2-2-83						2-2-83
HB 158	1-27-83	3-7-83	3-7-83					3-7-83	
RETURNED HB 158	3-7-83	3-8-83	3-8-83						3-8-83
HB 190	1-25-83	2-4-83 2-11-83	2-11-83				2-11-83		
HB 193	3-25-83	3-25-83	3-25-83				3-25-83		
HB 213	2-8-83	3-23-83 3-25-83	3-25-83				3-25-83		
HB 218	1-31-83	3-9-83	3-9-83				3-9-83		
HB 219	1-28-83	3-9-83	3-9-83					3-9-83	
HB 229	1-29-83	3-7-83	3-7-83				3-7-83		

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 9, 1983

The meeting of the Business and Industry Committee was called to order by Chairman Allen Kolstad on March 9, 1983, at 10:05 a.m., in Room 404, State Capitol.

ROLL CALL: All members were present with the exception of Senator Fuller who was excused.

CONSIDERATION OF HOUSE BILL 219: An act amending sections 30-13-202, and 30-13-205, MCA, relating to when registration of an assumed business name is prohibited; and providing an effective date.

Representative Tom Hannah stated this bill was by request of the Secretary of State. It amends the law that deals with registering under assumed business names. It is a disclosure bill.

PROPOSERS TO HOUSE BILL 219: Cliff Christian, Secretary of State's Office, stated the Model Business Corporation Act attempts to make uniform the filings they have across the country. In this case the filing under an assumed business name could in fact, if everything is uniform, make one file. It attempts to make filings uniform under assumed business names, trademarks and limited partnerships. He handed the committee sections which have already been passed. (Exhibit No. 1) and a copy of Title 35 that other states have passed or are passing portions of the Model Business Act. (Exhibit No. 2) He went through the subsections of the bill. This will make it more uniform and other states will be adopting similar language.

There were no further proposers and no opponents.

The hearing was closed on House Bill 219.

CONSIDERATION OF HOUSE BILL 218: An act to amend section 18-8-103, MCA, to broaden the exemption of registered professional engineers, surveyors, real estate appraisers, or registered architects from the laws regulating private consultants employed by stage agencies; and providing an immediate effective date.

Representative Les Kitselman stated this clarifies a gap in the consultant law. During the development of the selection procedure it was determined by the counsel for the Department of State lands that they could not use the exemption for engineers for a federally funded project to inspect private mines. This type of conflict also occurred in some other federal grant funds. It was suggested by the Department of State Lands that this bill be used to clear this up. It would provide that federal funds are to be treated the same way as handled by the State. He urged passage of this bill.

PROPOSERS TO HOUSE BILL 218: Sonny Hanson, Montana Technical Council, stated they support this bill. It evolved from the passage of Representative Moore's house bill last session. In developing the selection process it was determined that the State Lands stated they could not implement this type of process for these funds. Therefore, they suggested that we come in with this particular amendment. The

them have a solvency problem.

In closing, Representative Miller stated this is a "catch 22" situation which needs to be addressed.

The hearing was closed on House Bill 578.

ACTION ON HOUSE BILL 578: Senator Dover made the motion that the proposed amendments from Ms. Mitchell and Mr. Loble Be Adopted. Senator Lee seconded the motion.

The Committee voted unanimously, by voice vote, with the exception of Senator Fuller who was excused, that the proposed amendments to HOUSE BILL 578 BE ADOPTED.

Senator Dover made the motion that House Bill 578 As Amended Be Concurred In. Senator Lee seconded the motion.

The Committee voted unanimously, by voice vote, with the exception of Senator Fuller, that HOUSE BILL 578 AS AMENDED BE CONCURRED IN.

Senator Dover will carry this bill on the floor.

ACTION ON HOUSE BILL 218: Senator Goodover made the motion that House Bill 218 Be Concurred In. Senator Christiaens seconded the motion.

The Committee voted unanimously, by voice vote, with the exception of Senator Fuller who was excused, that HOUSE BILL 218 BE CONCURRED IN.

Senator Goodover will carry this bill on the floor.

ACTION ON HOUSE BILL 219: Senator Lee made the motion that we adopt the proposed amendment on page 2, lines 1, 6, and 10, following "contains" insert "or there is added at the end of the name,". There is no substance change, it just makes it clearer.

Staff Attorney Petesch stated there is no substance to this amendment. Senator Dover seconded the motion.

The Committee voted unanimously, by voice vote, with the exception of Senator Fuller who was excused that the proposed amendments to HOUSE BILL 219 BE ADOPTED.

Senator Dover made the motion that House Bill 219 As Amended Be Concurred In. Senator Lee seconded the motion.

The Committee voted unanimously, by voice vote, with the exception of Senator Fuller, that HOUSE BILL 219 AS AMENDED BE CONCURRED IN.

Senator Dover will carry this bill on the floor.

ACTION ON HOUSE BILL 267: Senator Christiaens stated he has a problem with this bill in that it refers to all retail sales and transfers of

STANDING COMMITTEE REPORT

March 9

19 83

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE Bill No. 219

HANNAH (DOVER)

Respectfully report as follows: That HOUSE Bill No. 219
be amended as follows:

1. Page 2, line 1.
Following: "contains"
Insert: ", or there is added at the end of the name,"
2. Page 2, line 6.
Following: "contains"
Insert: ", or there is added at the end of the name,"
3. Page 2, line 10.
Following: "contains"
Insert: ", or there is added at the end of the name,"

AND AS SO AMENDED
BE CONCURRED IN

XXXXXX

4/6

alter, amend, or repeal the bylaws or adopt new bylaws, subject to repeal change by action of the shareholders, shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

History: En. Sec. 25, Ch. 300, L. 1967; R.C.M. 1947, 15-2225; amd. Sec. 14, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "subject to repeal change by action of the shareholders: after adopt new bylaws".

Part 3

Corporate Name, Registered Office and Agent, and Service of Process

35-1-301. Corporate name. (1) The corporate name:

(a) shall contain the word "corporation", "company", "incorporated", or "limited" or shall contain an abbreviation of one of such words;

(b) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(c) shall not be the same as or deceptively similar to the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter, except that this provision does not apply if the applicant files with the secretary of state either of the following:

(i) the written consent of such other corporation or holder of a reserved registered name to use the name or a deceptively similar name with one or more words added to make such name distinguishable from such other name; or

(ii) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state.

(2) A corporation with which another corporation, domestic or foreign, is merged or that is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease, or other disposition to or exchange with a domestic corporation of all or substantially all the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of or is authorized to transact business in this state.

History: En. Sec. 7, Ch. 300, L. 1967; R.C.M. 1947, 15-2207; amd. Sec. 15, Ch. 475, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (1)(a); changed language "except that this provision ... in this state" in (1)(c); and added subsection (2).

TITLE 35

CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS

CHAPTER 1 BUSINESS CORPORATIONS

Chapter Compiler's Comments

Source: This chapter is based principally on the Model Business Corporation Act prepared by the Committee on Corporate Laws, Section of Corporation, Banking, and Business Law, American Bar Association, in 1960. Extensive amendments to the model act subsequently proposed by the ABA Committee on Corporate Laws were adopted by Ch. 475, L. 1981.

States Adopting Model Act: In response to an inquiry by the compiler, Mr. Harry P. Kamen, Secretary of the Committee on Corporate Laws, American Bar Association, supplied a copy of an October 9, 1980, memo from Mr. Sheldon L. Cohen on the states which have adopted the Model Business Corporation Act in whole or in part. The memo read in pertinent part as follows:

"The first grouping of states are, according to the MBCA Annotated, those which have adopted the act identically in substance. The CCH Corporate Law Guide refers to the states as jurisdictions which have adopted the MBCA substantially in full. They are: Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Iowa, Mississippi, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah, Virginia, Washington, Wisconsin, Wyoming.

[William M.] Fletcher [author of the Cyclopedia of the Law of Private Corporations] notes that the second grouping of states are those which have employed the MBCA to some extent in the drafting of new acts. The MBCA Annotated refers to these as states with comparable statutory provisions. They are: Alabama, California, Connecticut, Illinois, Louisiana, Maryland, Massachusetts, Missouri, New Jersey, New York, North Carolina, Pennsylvania.

The third grouping Fletcher refers to as other states which have enacted new or substantially revised corporate statutes which, to a considerable extent, are patterned after or influenced by the Model Act. These are: Delaware, Indiana, Kansas, Kentucky, Maine, Michigan, Ohio, Oklahoma, Rhode Island, Tennessee, Vermont, West Virginia.

Finally, there are five remaining states which neither have adopted nor referred to the MBCA in any significant manner. They are: Hawaii, Idaho, Minnesota, Nevada, New Hampshire."

Editing of Official Comments: Some of the American Bar Association (ABA) comments in the Model Business Corporation Act Annotated ([American Bar Foundation] West Publishing Co. 1960) contained internal references to those annotations for other sections of the Model Act. Most of these internal references were to annotations other than the official comments. Because only the official comments are reprinted herein, the references to the other annotations have been edited out of the official ABA comments reprinted here.

When the ABA comments for one section referred to another section of the Model Act, the corresponding section of Montana law has been substituted in brackets.